IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.55 OF 2004
IN
WRIT PETITION NO.5312 OF 2001

Khadi & Village Industries Commission ..Appellant

V/s.

Jagdish B.Patil & Anr. ..Respondents

Mr.Vijay Kantharia alongwith S.D.Bhosale for the appellant.

Mr.Y.M.Pendse for Respondent No.1.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 5.5.2005.

Oral Order :- (Per : R.M.Lodha,J)

. Heard.

2. The only contention raised by the learned Advocate for the appellant is that in relation to an industrial dispute concerning the Khadi and village Industries Commission (the appellant herein) appropriate Government is the Central Government under Section 2(a) (i) of the Industrial Disputes Act 1947. The learned Advocate for the appellant submitted that in view thereof the award passed by the concerned Labour Court and the Judgment of the learned single Judge have no legal sanctity as the industrial dispute was referred by the State

Government.

3. The contention of the learned Advocate for the appellant cannot be accepted. Section 2(a) of the Industrial Disputes Act 1947 defines "appropriate Government" thus :-

> "appropriate Government" means,-
> (i) in relation to any Industrial Disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company [or concerning any such controlled industry as may be specified in this behalf by the Central Government] or in relation to an Industrial Dispute concerning [a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act,1948 (9 of 1948), or [the Industrial Finance Corporation of India Limited formed and registered under the Companies Act,1956], or the Employees' State Insurance Corporation established under Section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act,1948 (46 of 1948) or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5-A and Section 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act,1956 (31 of 1956), or [the Oil and Natural Gas Corporation Limited registered under the Companies Act,1956 (1 of 1956)] or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act,1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act,1962 (58 of 1962), or the Unit Trust of India

established under Section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under Section 3, or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporations Act,1964 (37 of 1964), or [the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994 (55 of 1994)], or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act,1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited], or [the Banking Service Commission established, under Section 3 of the Banking Service Commission Act 1975, or] [an air transport service, or] [a banking or an insurance company, a mine, an oilfield] [a Cantonment Board,] or a major port, the Central Government, and

(ii) in relation to any other Industrial Dispute, the State Government.

4. The industries which have been stated in clause (i) admittedly do not include the Khadi and village industries commission. Khadi and village industries commission is creature of an Act of Parliament viz. Khadi and Village Commission Act 1956 but it cannot be said that Khadi and village industries commission carries on its work by or under the authority of the Central Government.

5. The five Judge Bench of the Supreme Court in the case of Steel Authority of India Limited V/s. National Union Water Front Workers & Ors. reported in 2001 (3) CLR 349 had an occasion to consider the expression ‘appropriate Government’ as defined in

Section 2(1) (a) of Contract Labour Regulation and Abolition Act 1970. That the defination of the 'appropriate Government' in Section 2(1) (a) of the Contract Labour Regulation and Abolition Act, 1970 is identical to Section 2(a) of the Industrial Disputes Act, 1947 is not in doubt. Dealing with the matter, the Constitution Bench of the Supreme Court considered the meaning of the expression 'appropriate Government' as given in clause-(a) in Section 2 of the Industrial Dispute Act first and then analysing the same, in paragraph-22 of the report, observed that the Central Government will be the appropriate Government in relation to the industrial disputes concerning (1) any industry carried on by or under the authority of the Central Government or by railway company; (2) any such controlled industry as may be specified in this behalf by the Central Government or (3) the enumerated industries (which form part of the definition.

6. The Supreme Court referred to the meaning of the word 'industry' and then in paragraph-30 of the report held thus :-

> From the above discussion, it follows that the phrase "any industry carried on under the authority of the Central Government" implies an industry which is carried on by virtue of, pursuant to, conferment of, grant of, or delegation of power or

> permission by the Central Government to a Central Government Company or other Govt. Company/undertaking. To put in differently, if there is lack of conferment of power or permission by the Central Government to a government company or undertaking, it would disable such a company/undertaking to carry on the industry in question.

The Supreme Court in Steel Authority of India also held that the fact of being instrumentality of the Central or State Government or being a State within the meaning of Article-12 of the Constitution of India cannot be determinative as to whether the industry carried on by a company/corporation or instrumentality of the State is by or authority of the Central Government for the purpose of or within the meaning of definition of 'appropriate Government' in the Contract Labour (Regulation and Abolition Act 1970).

8. In Steel Authority of India Ltd., the Supreme Court has not held, as is canvassed by the learned Advocate for the appellant that the authority or a body or an undertaking created by Central Legislation being a State or instrumentality of the State within the meaning of Article 12 of the Constitution of India shall be an industry carried on by or under the authority of the Central Government.

9. The question whether in relation to Khadi and

village industries commission, the appropriate Government is the Central Government or the State Government came up for consideration directly before the learned single Judge of Delhi High Court in the matter of Nand Kishore Jain V/s. Presiding Officer, Labour Court, Delhi & Ors. 1995 II CLR 758. The learned single Judge held that in relation to Khadi and village industries commission, it is the State Government which is the appropriate Government and not the Central Government. In its Judgment, the learned single Judge of the Delhi High Court relied upon the Judgment of the Supreme Court in Heavy Engineering Mazdoor Union V/s. State of Bihar AIR 1970 SC 82 and observed thus :-

> In Heavy Engineering Mazdoor Union V. State of Bihar AIR 1970 SC 82 a question arose, whether an industry carried on by a company incorporated under the Companies Act was an industry carried on "under the authority of" the Central Government and it was competent to make a reference under the Industrial Disputes Act. The Supreme Court pointed out that in the absence of a statutory provisions, a commercial corporation acting on its own behalf, even though it is controlled wholly or partially by a Government department, will be ordinarily presumed not to be a servant or agent of the State; such an inference that the Corporation is the agent of the Government may be drawn where it is performing in substance governmental and not commercial functions; and an industry carried on by or under the authority of the Central Government means either the industry carried on directly by a department of the Government such as the Posts & Telegraph or the Railways or one carried on by such department through the

> instrumentality of an agent. It was also pointed out that where a statute setting up a corporation states that the corporation should be an agent of the State then, it could be easily identified as such. In para 4 of the judgment it was held that the expression "an industry carried on by or under the authority of the Central Government" as used in the definition of expression. Apprrpriate Government in Section 2(a) 9i) of the Industrial Disputes Act would mean "pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master." The Supreme Court observed that although the entire share capital of the Heavy Engineering, Corporation Ltd., was contributed by the Central Government and extensive powers had been conferred on it, yet the Corporation could not be said to be an industry carried on by or under the authority of the Central Government."

10. The Constitution bench of the Supreme Court in the case of Steel Authority of India has considered the view taken by three Judge Bench in Heavy Engineering (supra). In paragraph-41 of the report it was observed thus :-

> In Heavy Engineering Mazdoor Union v.State of Bihar and Ors. 1969 91) SCC 765 the said expression (appropriate Government) came up for consideration. The Heavy Engineering Corporation is a Central Government Company. The President of India appoints Directors of the company and the Central Government gives directions as regards the functioning of the company. When disputes arose between the workmen and the management of the company, the Government of Bihar referred the disputes to the Industrial Tribunal for adjudication. The union of the workmen raised an objection that the appropriate Government in that case was the Central Government, therefore,

reference of the disputes to the Industrial Tribunal for adjudication by the State Government was incompetent. A two Judge Bench of this Court elaborately dealt with the question of appropriate Government and concluded that the mere fact that the entire share capital was contributed by the Central Government and the fact that all its shares were held by the President of India and certain officers of the Central Government, would not make any difference. It was held that in the absence of a statutory provision, a commercial corporation acting on its own behalf even though it was controller, wholly or partially, by a Government Department would be ordinarily presumed not to be a servant or agent of the State. It was, however, clarified that an inference that the corporation was the agent of the Government might be drawn where it was performing in substance Governmental and not commercial functions. It must be mentioned here that in the light of the judgments of this Court, referred to above, it is difficult to agree with the distinction between a governmental activity and commercial function of government companies set up and owned by government, insofar as their function in the realm of public law are concerned. However, the contention that the decision in that case 1969 (1) SCC 765 is based on concession of the counsel for the appellant is misconceived. This Court summed up the submission in para 4 thus :

> The undertaking, therefore, is not one carried on directly by the Central Government or by any one of its departments as in the case of posts and telegraphs or the railways. It was, therefore, rightly conceded both in the High Court as also before us that it is not an industry carried on by the Central Government. That being the position, the question then is, is the undertaking carried on under the authority of the Central Government?"

It is evident that the concession was with regard to the fact that it was not an industry carried on by the Central Government and not in regard to "was the

> undertaking carried on under the authority of the Central Government ?" Indeed that was the question decided by the Court on contest and it was held that the undertaking was not carried on by the Central Government company under the authority of the Central Government and that the appropriate Government in that case was the State Government and not the Central Government. From the above discussion, it is evident that the Court correctly posed the question- whether the State Government, or the Central Government was the appropriate Government and rightly answered it."

11. The legal position admits of no ambiguity that the distinction has to be drawn clearly in the performance of Government functions and commercial functions. Khadi and village industries commission is a creature of the statute and even if we assume that the Central Government has control over it, the Khadi and village industries commission does not become the servant or an agent of the Central Government and by no stretch of imagination can be held to be performing the functions by or under the authority of the Central Government.

12. We, thus, hold that the appropriate Government in relation to the industrial dispute concerning Khadi and village industries commission is the State Government.

13. No other contention was urged.

14. Letters Patent Appeal is dismissed.

(R.M.LODHA,J)

(R.S.MOHITE,J)

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Coram : R.M.LODHA &
R.S.MOHITE,JJ

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PC

. In view of dismissal of Letters Patent Appeal, Civil application does not survive and stands disposed of accordingly.

(R.M.LODHA,J)

(R.S.MOHITE,J)